REMARKS

Claims 1-17 are pending in the application. In this Amendment, claims 1-17 are amended.

Claim 1 is amended to exclude non-elected compounds, for which Applicants reserve the right to file a divisional application(s).

Claim 1 has also been amended to recite "drugs" comprising as an active ingredient compounds of formula (I). This amendment is supported by, for example, original claims 2-17. This amendment is not intended to be narrowing but intended to more clearly state that which Applicants regard as their invention.

Claims 2-17 are amended to clarify that the drugs of the present invention inhibit cell death that may be associated with a variety of disorders. This amendment is supported by the specification, for example, by the title of the invention. This amendment is not intended to be narrowing.

I. Election/Restrictions

At page 2 of the Office Action, the Examiner states that the following is elected subject matter: R^1 represents an unsubstituted alkyl; R^2 represents an unsubsituted alkyl; R^3 represents hydrogen; and R^4 represents an alkyl- or arylsulfonyl group which may be substituted, an alkoxyl group which may be substituted, an aryloxy group which may be substituted, an alkyl- or arylthio group which may be substituted, a hydroxyl group, or an amino group which may be substituted.

However, Applicants request reconsideration of the elected subject matter for the following reasons.

Applicants submit that Groups I-IV of the May 30, 2003 Restriction Requirement were grouped based on R^4 substituents, with R^1-R^3 being the same for each of Groups I-IV.

Applicants had elected a different group V, as the Examiner so provides at page 3, second full paragraph of the requirement for restriction. Group V as elected by Applicants was intended to include different substituents at R^4 than Groups I-IV. Therefore, Applicants assert that R^1-R^3 of the compounds of Group V should be the same as for Groups I-IV, as the Examiner's restriction suggests that such compounds (compounds where R^1-R^3 is as set forth in the requirement for restriction) do not constitute independent and distinct inventions.

In addition, in Applicants' Response to the Restriction Requirement of June 30, 2003, Applicants requested that compound nos. 7-12, 14 and 17 on page 24 of the specification be considered for Examination. Thus, Applicants request that the Examiner acknowledge that compound number 14 is indeed elected.

Finally, Applicants assert that R^1 should also include hydrogen, since compound 7 has a hydrogen at this position.

II. Claim Objections/Withdrawn Claims

At page 2 of the Office Action, the Examiner objects to claims 1-17 for containing non-elected subject matter.

The claims have been amended to exclude non-elected subject matter, for which Applicants reserve the right to file a divisional application(s).

Accordingly, Applicants respectfully request that this objection be withdrawn.

III. Claim Rejections - 35 U.S.C. § 103

At page 4 of the Office Action, claims 1-17 are rejected under 35 U.S.C. § 103(a) as being obvious over Schultz *et al.*, WO 9113070 (STN International ® CAPLUS Database, Accession No. 1991:656019).

Specifically, the Examiner contends that Schultz teaches species that are similar to the instant compounds. The Examiner contends that Shultz suggests the instant compound where R^1 is alkyl, R^2 is alkyl, R^3 is hydrogen, and R^4 is an alkoxy group or an amino group substituted by alkyl or benzyl, since the instant compounds differ from those of Schultz only at R^2 (the instant compounds have an unsubstituted alkyl at R^2 while the compounds of Shultz have a hydrogen).

The Examiner concludes that, since it is well established that the substitution of methyl for hydrogen on a known compound is not a patentable modification absent unexpected or unobvious results, motivation to make the claimed compounds derives from the expectation that structurally similar compounds would possess similar activity.

Applicants request reconsideration of this rejection for the following reasons.

Schlutz relates to a therapeutic agent for immune or allergic diseases, and Schultz discloses the following four activities in the Examples specifically:

(1) an activity of inhibiting growth of mixed lymphocytes (MLR)

(2) an activity of inhibiting mitogen-induced leukocyte proliferation (PWM)

(3) an activity of inhibiting mitogen-induced immunoglobulin synthesis in lymphocytes (IgG), and

(4) an activity of inhibiting growth of tumor cells (TGI)

Thus, Schultz teaches inhibition of cell growth or activation.

However, the inhibition of growth and activation of cells is contrary to the inhibition of cell death as disclosed for compounds of the present invention. For example, the immunodiseases and allergic disease disclosed in Schultz are caused by excess growth and activation of immunocytes, thus in Schultz, the compounds which inhibit the growth and activation of the immunocytes are disclosed as a therapeutic agent for immune or allergic diseases.

On the other hand, the activity of the compounds of the present invention is based on an opposite property, the inhibition of cell death, and is unexpected from the teachings of Schultz.

Accordingly, Applicants request reconsideration and withdrawal of this rejection.

IV. Claim Rejections - 35 U.S.C. § 112, First Paragraph

At page 5 of the Office Action, claims 2-17 are rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement.

Specifically, the Examiner contends that the specification does not enable one skilled in the art to prevent the progression of symptoms of the diseases recited in claims 2-17 using the compounds recited in claim 1.

Applicants submit that the compounds of the present invention are useful for treating or preventing the cell death associated with the recited diseases, to stop the progress of symptoms, and such is apparent from the specification (See e.g., the title of the invention).

Applicants have amended the claims to clarify that cell death is being treated or prevented with the claimed compounds. This amendment is not intended to be narrowing, but is intended to clarify that which the inventors regard as their invention.

Accordingly, Applicants respectfully request withdrawal of this rejection.

V. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

At page 11 of the Office Action, claims 1-17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner states that claims 1-17 contain the open-ended term "comprising", and that compound claims should not use open-ended transition words.

Claim 1 is amended to recite "drugs," of which compounds of formula I are an active ingredient.

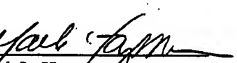
Thus, Applicants assert that the language is consistent and clear. Accordingly, Applicants respectfully request that this rejection be withdrawn.

VI. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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